

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA

Earnest M. Johnson,	)	C/A No.: 3:11-2594-CMC-SVH
	)	
Plaintiff,	)	
	)	
vs.	)	REPORT AND RECOMMENDATION
	)	
Officer KC Chatara,	)	
	)	
Defendant.	)	
	)	

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Plaintiff, proceeding *pro se* and in forma pauperis, filed this action on September 26, 2011, pursuant to 42 U.S.C. § 1983, alleging violations of his constitutional rights regarding an arrest. [Entry #1]. On October 12, 2011, United States Magistrate Judge Joseph R. McCrorey issued an Report and Recommendation (“R&R”) recommending former defendants City of Columbia Police Department and Sgt. Douglas A. Shuler be summarily dismissed from this case. [Entry #7]. The R&R was adopted by the Honorable Cameron McGowan Currie on November 7, 2011. [Entry #11]. Simultaneous with issuing the R&R, Judge McCrorey issued an order authorizing service of process on defendant Officer KC Chatara. [Entry #6]. On December 14, 2011, the service documents for defendant Chatara were returned unexecuted with a note in the “Remarks” section indicating that “CPO stated that the defendant has moved to California.” [Entry #13].

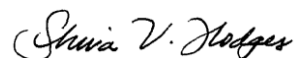
On October 24, 2012, the undersigned issued an order directing Plaintiff to show good cause for failure to effect service on Chatara and to send the court updated service documents. [Entry #18]. The court noted that although the United States Marshal Service (“USMS”) is responsible for effecting service to the extent possible, it is only to attempt service at the address provided by Plaintiff. *Id.* Plaintiff had previously been warned that:

“Plaintiff must provide, and is responsible for, information sufficient to identify defendants on the Forms USM-285. The United States Marshal cannot serve an improperly identified defendant, and unserved defendants may be dismissed as parties to this case.” [Entry #6]. Plaintiff was specifically advised that this case would be recommended for dismissal for non-service and for failure to prosecute if he did not show good cause for the failure to serve. [Entry #18].

On November 6, 2012, the Clerk’s office received a proposed USM-285 from Plaintiff listing the same address for Chatara as that provided for the prior unexecuted service documents. [Entry #20]. The proposed USM-285 also provides a physical description of Chatara (“5’8-5’9 black hair Indian or Mexican”) and noted that he last worked at the Columbia Police Department. *Id.*

Notwithstanding the specific warning and instructions set forth in the court’s October 24, 2012 order, Plaintiff has failed to provide an address for Chatara such that the USMS can identify him in order to effect service or to provide good cause for his failure. As such, it appears that Plaintiff has no current address for Chatara and is unable to sufficiently identify him. Therefore, the undersigned recommends that this matter be dismissed without prejudice for non-service pursuant to Fed. R. Civ. P. 4(m).

IT IS SO RECOMMENDED.



February 21, 2013  
Columbia, South Carolina

Shiva V. Hodges  
United States Magistrate Judge

**The parties are directed to note the important information in the attached  
“Notice of Right to File Objections to Report and Recommendation.”**

### **Notice of Right to File Objections to Report and Recommendation**

The parties are advised that they may file specific written objections to this Report and Recommendation with the District Judge. Objections must specifically identify the portions of the Report and Recommendation to which objections are made and the basis for such objections. “[I]n the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must ‘only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.’” *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee’s note).

Specific written objections must be filed within fourteen (14) days of the date of service of this Report and Recommendation. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b); *see* Fed. R. Civ. P. 6(a), (d). Filing by mail pursuant to Federal Rule of Civil Procedure 5 may be accomplished by mailing objections to:

Larry W. Propes, Clerk  
United States District Court  
901 Richland Street  
Columbia, South Carolina 29201

**Failure to timely file specific written objections to this Report and Recommendation will result in waiver of the right to appeal from a judgment of the District Court based upon such Recommendation.** 28 U.S.C. § 636(b)(1); *Thomas v. Arn*, 474 U.S. 140 (1985); *Wright v. Collins*, 766 F.2d 841 (4th Cir. 1985); *United States v. Schronce*, 727 F.2d 91 (4th Cir. 1984).